



INTERIOR BOARD OF INDIAN APPEALS

Luke Hartman, a minor, and Kerry Hartman v. Great Plains Regional Director, Bureau of
Indian Affairs

43 IBIA 28 (04/24/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

LUKE HARTMAN, a minor, and	:	Order Dismissing Appeal
KERRY HARTMAN,	:	
Appellants,	:	
	:	
v.	:	
	:	
GREAT PLAINS REGIONAL	:	Docket No. IBIA 06-56-A
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	April 24, 2006

Luke Hartman, a minor, and Kerry Hartman (Appellants) appealed from the failure of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to decide an appeal pending before him from an October 18, 2005 decision by the Acting Superintendent of the Fort Berthold Agency (Superintendent) finding Appellant Kerry Hartman in trespass on trust land. Appellants' appeal to the Board was filed pursuant to 25 C.F.R. § 2.8 (Appeal from inaction), and alleged that Appellants had requested a decision from the Regional Director by letters dated January 1, 2006 and February 15, 2006.

Appellants' notice of appeal did not include a description of the property at issue, nor did it enclose the Superintendent's decision or the referenced January 1, 2006 and February 15, 2006 letters that apparently formed the basis for Appellants' appeal from the Regional Director's inaction under section 2.8. ^{1/} In light of these deficiencies in the notice of appeal, the Board ordered Appellants to provide more information on or before March 24, 2006. See Mar. 13, 2006 Pre-Docketing Notice, Order for Additional Information from Appellants, and Order for Response from Regional Director at 2. The Board ordered that "[a]t a minimum, Appellants shall identify the property or properties involved in this matter (allotment number and legal description) and shall provide the

^{1/} Section 2.8 includes certain procedural requirements that an appellant must follow before the alleged inaction of a BIA official becomes appealable. See 25 C.F.R. § 2.8, Migisew-Asiniwiin Ojibwa Grand Council of Clans v. Director, Office of Self-Governance, 41 IBIA 139, 139-40 & n.1 (2005).

Board with the two letters dated January 1, 2006 and February 15, 2006 that requested action by the Regional Director.” Id. The Board’s order further stated: “Failure by Appellants to comply with this order may result in summary dismissal of this appeal without further notice.” Id. (Emphasis in original.)

Appellants failed to provide the Board with the requested information and documents. 2/

On March 24, 2006, however, the Board received from the Regional Director a copy of a March 17, 2006 letter from the Regional Director to Appellants’ counsel, providing him with an update on the appeal pending before the Regional Director and allowing him 30 days from receipt of the letter to respond to certain comments filed in the appeal by other interested parties.

Appellants’ failure to comply with the Board’s March 13, 2006 order constitutes sufficient grounds for the Board to summarily dismiss this appeal. In the absence of the requested January 1, 2006 and February 15, 2006 letters, the Board is unable to determine whether Appellants complied with the requirements of section 2.8 before filing this appeal, and Appellants declined to provide those letters to the Board.

In addition, the Board concludes that dismissal of this appeal is appropriate because the March 17, 2006 letter to Appellants’ counsel that the Regional Director submitted to the Board indicates that the Regional Director is still receiving pleadings in the appeal that is pending before him. Therefore, it appears that the matter is not ripe for a decision by the Regional Director. The Board will dismiss a section 2.8 appeal if it appears that a matter is not ripe for action by the Regional Director. See Paiute Indian Tribe of Utah v. Western Regional Director, 40 IBIA 208, 209 (2005).

2/ Separately, the Board obtained a copy of the Superintendent’s October 18, 2005 decision. The Superintendent found Appellant Kerry Hartman to be in trespass on Allotment No. 316A, located at NW1/4SE1/4SE1/4SW1/4, Section 3, Township 149 North, Range 90 West in McLean County, North Dakota, on the Fort Berthold Reservation. The Superintendent also declined to approve an application dated October 4, 2001, to gift deed the property from Della M. Austin to Appellant Luke Hartman.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal. 3/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

3/ On March 29, 2006, the Board received a motion from Appellants to disqualify the Chief Administrative Judge from this proceeding. On April 17, 2006, after the Chief Administrative Judge declined to withdraw, the Director of the Office of Hearings and Appeals denied Appellants' motion for disqualification, pursuant to 43 C.F.R. § 4.317(b). Luke Hartman and Kerry Hartman, 32 OHA 185 (2006).